

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, *ex rel* )  
 State Engineer, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 RAMON ARAGON, *et al.*, )  
 )  
 Defendants. )

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 No. 69cv07941-BB-ACE  
 RIO CHAMA STREAM SYSTEM  
 Section 3: Rio Cebolla  
 Subfile Nos. CHRB-002-0001  
 CHRB-002-0002  
 CHRB-003-0001  
 CHRB-003-0002

**ASOCIACIÓN DE ACÉQUIAS NORTEÑAS DE RIO ARRIBA'S**  
**MOTION TO INTERVENE**

COMES NOW the Asociación de Acéquias Norteñas de Rio Arriba (hereinafter "the Asociación") and moves to intervene in the above-referenced subproceeding. The Asociación seeks intervention as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2) or permissive intervention pursuant to Fed. R. Civ. P. 24(b)(2). As the Asociación meets the requirements of both Rules, the court may enter intervention under either. Furthermore, should there be any question about the issue, Rule 24 must be construed liberally and any doubts resolved in favor of the party seeking intervention. *See e.g. United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8<sup>th</sup> Cir. 1995).

**I. THE ASOCIACIÓN IS ENTITLED TO INTERVENTION AS OF RIGHT**

Rule 24(a)(2) provides in pertinent part:

Upon timely application anyone shall be permitted to intervene in an action:

... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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The Asociación meets all three requirements for intervention as a matter of right - interest in the subject matter litigation, possible impairment of such interest, and inadequate representation of the interest by existing parties. *See e.g. Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10<sup>th</sup> Cir. 1996). The Asociación claims an interest in the water rights that are the subject of this subproceeding as its members include acéquias, in particular the Acéquia de los Brazos, that are situated downstream from the existing parties. The disposition of the subproceeding could significantly impact the Asociación's rights to the water in Section 7 of the Rio Chama Stream System. The existing parties, based on their upstream location, cannot adequately represent the interests of the Asociación. Thus, the Association asks this court to find that the Asociación is entitled to an intervention as of right.

## **II. IF INTERVENTION AS OF RIGHT IS DENIED THE ASOCIACIÓN SHOULD BE ALLOWED TO PERMISSIVELY INTERVENE**

In the alternative, the Asociación asks the court to exercise its discretion and grant permissive intervention pursuant to Fed. R. Civ. P. 24(b)(2). The Asociación meets the requirements of Rule 24(b)(2) which provides that permissive intervention is allowed:

[u]pon timely application . . . when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

None of the existing parties to the subproceeding will be prejudiced if the court exercises its discretion in allowing a permissive intervention on the part of the Asociación. Nor will a permissive intervention result in a delay in the proceedings. The Asociación should be allowed to protect its interest in the water that is the subject of the subproceeding involving the upstream

parties. Accordingly, this court should allow the Asociación to permissively intervene in the subproceeding.

Ed Newville on behalf of the State supports this motion.

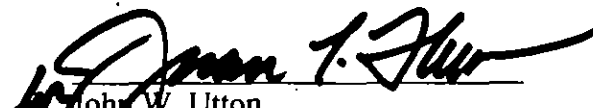
FOR THE FOREGOING REASONS, the Asociación submits that it is entitled to intervene in this litigation both as a matter of right as provided in Rule 24(a)(2) as well as through the court's exercise of discretion pursuant to Rule 24(b)(2).

Respectfully submitted,

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BY: JOHN W. UTTON

I HEREBY CERTIFY that a true  
and correct copy of the foregoing  
pleading was mailed to all parties  
of record this 12 day of June, 2004.

  
John W. Utton

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